

Minerals Management Service, Interior

§ 243.3

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**Subpart A—General Provisions**

**§ 243.1 What is the purpose of this part?**

This part applies to you if you are a lessee or recipient of an order. This part explains:

(a) How you may suspend compliance with an order that you (or your designee if you are a lessee) have appealed under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, or under 30 CFR part 290, subpart b; and

(b) When you or another person acting on your behalf must submit a bond or other surety or demonstrate financial solvency.

**§ 243.2 What leases are subject to this part?**

This part applies to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), and to all federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands.

**§ 243.3 What definitions apply to this part?**

*Assessment* means any fee or charge levied or imposed by the Secretary or a delegated State other than:

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(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

*Designee* means the person designated by a lessee under § 218.52 of this chapter to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

*Lessee* means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease, or any person to whom all or part of the lessee's interest or operating rights in a lease has been assigned.

*MMS bond-approving officer* means the Associate Director for Royalty Management or an official to whom the Associate Director delegates that responsibility.

*MMS-specified surety instrument* means an MMS-specified administrative appeal bond, an MMS-specified irrevocable letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit.

*Notice of order* means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

*Order* means an order appealable under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, under 30 CFR part 290 subpart B, or under 30 CFR part 208.

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture.

#### § 243.4 How do I suspend compliance with an order?

(a) If you timely appeal an order, and if that order or portion of that order:

(1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency under this part, except as provided in paragraph (b) of this section; or

(2) Does not require you to make a payment, compliance with that order is suspended when you meet all requirements to file that appeal.

(b) You need not meet the requirements of paragraph (a) of this section if:

(1) The order is an assessment; or

(2) Another person agrees to fulfill these requirements on your behalf under § 243.5.

#### § 243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument or demonstrate financial solvency under this part on behalf of an appellant required to post a bond or other surety instrument under § 243.4(a)(1).

#### § 243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.

#### § 243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency under § 243.5, you:

(a) Must notify MMS in writing at the address specified in § 243.200(a) that you are assuming the appellant's responsibility under this part;

(b) May not assert that you are not otherwise liable for royalties or other payments under 30 U.S.C. 1712(a), or any other theory, as a defense if MMS calls your bond or requires you to pay based on your demonstration of financial solvency; and

(c) May end your voluntarily-assumed responsibility for posting a bond or other surety instrument only after the appellant under this part either:

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- (1) Pays or posts a bond or other surety instrument; or
- (2) Demonstrates financial solvency.

### § 243.8 When will MMS suspend my obligation to comply with an order?

(a) *Federal leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Federal mineral leases onshore or on the Outer Continental Shelf (OCS), and:

(1) If the amount under appeal is less than \$10,000 or does not require payment of a specified amount, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Land Management for onshore leases, and MMS for OCS leases, as collateral for the obligation; or

(2) If the amount under appeal is \$10,000 or more, MMS will suspend your obligation to comply with that order if you:

(i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or

(ii) Demonstrate financial solvency under subpart C.

(b) *Indian leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Indian mineral leases subject to this part, and:

(1) If the amount under appeal is less than \$1,000 or does not require payment, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Indian Affairs as collateral for the obligation; or

(2) If the amount under appeal is \$1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.

(c) Nothing in this part prohibits you from paying any demanded amount or complying with any other requirement pending appeal. However, voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is

otherwise available under these rules does not create judicially reviewable final agency action under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, MMS may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

### § 243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, MMS will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, MMS may decide that it will not suspend your obligation to comply with an order. MMS will notify you in writing of that decision and the reasons for it.

### § 243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an MMS-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) MMS may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the MMS Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

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(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from MMS under § 243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 243.8 or § 243.9 and you do not pay the amount required under the order or decision; or

(6) If the MMS bond-approving officer determines that you are no longer financially solvent under § 243.202(c), and you do not pay the order amount or post a bond or other MMS-specified surety instrument under subpart B within 30 days of that determination.

### § 243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

### § 243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

If you appealed an order before June 14, 1999 and you submitted an MMS-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

## Subpart B—Bonding Requirements

### § 243.100 What standards must my MMS-specified surety instrument meet?

(a) An MMS-specified surety instrument must be in a form specified in MMS instructions. MMS will give you written information and standard forms for MMS-specified surety instrument requirements.

(b) MMS will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

### § 243.101 How will MMS determine the amount of my bond or other surety instrument?

(a) The MMS bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the MMS-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

(1) Amend the single surety instrument annually on the date you filed your first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal

until you amend the instrument to cover the new appeals.

### Subpart C—Financial Solvency Requirements

#### § 243.200 How do I demonstrate financial solvency?

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, Debt Collection Section using:

(1) The U.S. Postal Service or private delivery at P.O. Box 5760, MS 3031, Denver, CO 80217-5760; or

(2) Courier or overnight delivery at MS 3031, Denver Federal Center, Bldg. 85, Room A-212, Denver, CO 80225-0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or MMS notifies you that you must redemonstrate financial solvency.

#### § 243.201 How will MMS determine if I am financially solvent?

(a) The MMS bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than \$300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than \$300 million, you must submit the following to the MMS

Debt Collection Section by one of the methods in § 243.200(a):

(1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and

(2) A nonrefundable \$50 processing fee:

(i) You must pay the processing fee to us following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments;

(ii) You must submit the fee with your request under paragraph (c)(1) of this section, and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency under paragraph (a) of this section and you have active appeals.

(d) If you request that we consult a business-information or credit-reporting service or program under paragraph (c) of this section:

(1) We will use criteria similar to that which a potential creditor would use to lend an amount equal to the bond or other surety instrument we would require under subpart B;

(2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate;

(i) If our bond-approving officer determines that the business-information or credit-reporting service or program information demonstrates your financial solvency to our satisfaction, our bond-approving officer will not require you to post a bond or other surety instrument under subpart B;

(ii) If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation.

#### § 243.202 When will MMS monitor my financial solvency?

(a) If you are presumptively financially solvent under § 243.201(b), MMS

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will determine your net worth as described under §§243.201(b) and (c) to evaluate your financial solvency at least annually on the date we first determined that you demonstrated financial solvency as long as you have active appeals and each time you appeal a new order.

(b) If you ask us to consult a business-information or credit-reporting

service or program under §243.201(c), we will consult a service or program annually as long as you have active appeals and each time you appeal a new order.

(c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.